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SUBJECT: GEORGIAN POLITICAL REFORM UPDATE, PART ONE

REF: A. A) TBILISI 0281

- [1B.](#) B) TBILISI 1242
- [1C.](#) C) TBILISI 0767
- [1D.](#) D) TBILISI 0284
- [1E.](#) E) TBILISI 1042
- [1F.](#) F) TBILISI 1036
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- [1H.](#) H) TBILISI 1247
- [1I.](#) I) TBILISI 1301

Classified By: Ambassador John F. Tefft for reasons 1.4 (b) and (d).

[11.](#) (U) This is part one of a two-part series by outgoing officers on Georgia's progress on key internal reforms as Georgia tries to obtain a NATO Membership Action Plan (MAP) in the next twelve months.

[12.](#) (C) Summary. The Saakashvili government, which came to power following the Rose Revolution in 2003, continues to undertake historic reforms in almost every sector of government. This cable focuses on three reforms which are critical to building a democracy in Georgia: judicial reform, human rights, and elections. While the GoG has taken important steps in all these areas, by increasing the independence of the judiciary, improving the accountability and professionalism of police as well as the situation in the prisons, and improving the conduct of elections, much work still needs to be done. On judicial reform, the GoG must adopt and implement a ban on ex parte communications as well as successfully launch a 14-month judicial training program for new judges by the legislatively imposed October deadline.

On police reform, the GoG needs to promptly and thoroughly investigate all allegations of excessive use of force or abuse by law enforcement. It also should start long-delayed structural reforms to professionalize the bureaucracy of the Ministry of Interior Affairs (MOIA), remove arbitrariness, and increase oversight. On prison reform, the GoG needs to maintain the pace of reform to ease severe overcrowding in its facilities and address concerns about abuse through implementation of a new mechanism for reporting abuse. With regard to the touchstone 2008 combined presidential and parliamentary elections, the GoG needs to continue to build on the positive progress demonstrated in the 2006 local elections. Embassy continues to press the GoG on all these issues as Georgia strives to achieve a MAP from NATO by spring 2008. End Summary.

STILL TOUGH ROAD TO JUDICIAL INDEPENDENCE

[13.](#) (C) Since the Rose Revolution, the pace of judicial reform has been uneven. Critical reforms have been successfully implemented including, for example, the reorganization of the court system into a simplified three-tier system that

promotes efficient administration of justice, modernization of court facilities, increased judicial salaries to discourage corruption, reform of the judicial appointment and disciplinary processes which removed the executive branch members from the High Council of Justice HCOJ) (reftel A).

¶4. (C) Despite this progress and President Saakashvili's June 2005 statement that increasing judicial independence would be a top reform initiative for the GoG, the pace of reform seems to have lagged. To address this, Post has continued to press for specific action in the following key areas:

- Implementation of a ban on ex parte communications to address the Soviet-legacy of 'telephone justice';
- Increase transparency in the judicial appointment process by publicizing criteria used to assess suitability of candidates;
- Successful launch of the 14-month comprehensive training program for newly appointed judges;
- Implementation of a magistrate system to promote judicial efficiency in adjudicating minor offense and small claims as well as to provide practical experience for new judges; and,
- Promoting stability and public confidence in judicial system through publication of judicial rulings and decisions.

¶5. (C) Implementation of these key reforms is critical for development and strengthening of an independent judiciary in Georgia. The Parliamentary Legal Issues Committee has been developing a draft ex parte law for many months. Giga Bokeria, the Deputy Chair of the Committee, assured Embassy representatives May 30 that a draft will be introduced in

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Parliament the week of June 4. Implementation of the law will be critical, as a previous ex parte ban adopted in the Shevardnadze era was never implemented. Moreover, senior GoG officials, including the President, have frequently made public comments regarding high profile pending criminal cases such as the recent Batiashvili case (reftel B). While these type of statements by high level officials would not violate the letter of an ex parte communications ban, they could continue to reinforce the public perception that the judiciary is merely a tool of the executive branch.

¶6. (C) Despite substantial encouragement and assistance from the international community, the High School of Justice (HSOJ) is in danger of failing to meet the October deadline for launch of the 14-month training program for new judges. Currently, the HSOJ has not developed a curriculum or retained instructors for the course. Embassy representatives, including the Ambassador, have met with HSOJ Director David Saakashvili and his Deputy Shota Rukadze to repeatedly stress the importance of meeting the October deadline (reftel C) (Note: David Saakashvili is the President's half-brother. End Note.) Nevertheless, Saakashvili and Rukadze recently failed to circulate a draft curriculum on May 25 as promised. Rukadze told Embassy representatives on May 30 that the curriculum is now complete and being reviewed by the HCOJ. Once reviewed, he said it would be translated into English and released for international review and comment in July. We will continue to press this point. The successful launch of the 14-month HSOJ program is also key to the successful implementation of the magistrate judge system.

¶7. (C) With regard to increasing transparency in the judicial appointment process, in March, the HCOJ did begin publicizing the names of eligible judicial appointees (reftel D). The list is comprised of individuals who have passed a written examination. The next step we are encouraging the GoG to take with regard to this process is to clarify the criteria used in the interview process to evaluate the candidates.

18. (C) Even when the GoG has successfully implemented these reforms, for the judiciary to be a truly independent branch of government viewed by Georgians as such, two things still need to happen. First, time has to pass. Dating back to the Soviet era, the judiciary was considered one of the most, if not the most, corrupt parts of the government. Accordingly to begin to dispel this perception, the judicial reform initiative must include a concerted effort by judges to publicize -- either in statements from the bench or via written opinions -- clear reasons based in law for their rulings. We have also encouraged the Chairman of the Supreme Court to expand the public relations department of the court.

Second, senior government officials need to refrain from making public statements regarding pending investigations or ongoing trials.

19. (C) The prosecution and trial of former government official Irakli Batiashvili on charges of providing intellectual support to a rebel warlord in the Kodori Gorge in Abkhazia is illustrative of how statements by senior GoG officials -- in this instance, influential MP and Saakashvili insider Giga Bokeria, who said the evidence against Batiashvili was irrefutable -- erode public confidence and international perceptions that the judiciary is independent. Compounding this was the admission during the trial by the judge that she had not listened to the audiotapes that were the key evidence against Batiashvili. Moreover, the judge's failure to articulate a clear basis for the guilty verdict reinforced the common public perception that the verdict was pre-ordained (reftel B).

REAL COMMITMENT TO PRISON REFORM

110. (C) In response to concerns expressed by the international community, in the Department's 2006 Human Rights Country Report of Georgia, and by international human rights groups such as Human Rights Watch, which issued a highly critical evaluation of the prison system in summer 2006, the GoG has taken significant steps to, among other things, alleviate severe overcrowding, improve nutrition for prisoners, and establish a mechanism for reporting allegations of abuse or mistreatment.

111. (C) The prognosis for continued and successful reform in the prison system is good. Construction and rehabilitation of prisons and pre-trial detention facilities is ongoing although slightly behind schedule. Nevertheless, by autumn, all inmates in the Georgian penal system should be housed in

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newly constructed or rehabilitated facilities. MP Giga Bokeria told Embassy representatives May 28 that the backlog of pre-trial detainees has been eliminated. Moreover, the budget for inmate nutrition and health care is increasing while the growth in inmate population is stabilizing. Previously, potential improvements hoped for as a result of increased budget allotments had been eroded by substantial increases in the inmate population.

112. (C) Ombudsman Sozar Subari has been a vocal critic of the prison system. Recently, however, he told Poloff that he believes that as a result of the construction/rehabilitation projects and the increased budgetary allotments that the physical conditions in which Georgia's inmates are housed will continue to improve (reftel E). Subari is more skeptical, however, of the effectiveness of the successful implementation of a confidential process for inmates to report allegations of abuse or mistreatment by prison officials. Subari believes that inmates are reluctant to report abuse for fear of retribution. To combat this, Subari hopes to expand monitoring of prisons to replicate the success of the police station monitoring operation overseen by his office which reduced the incidence of abuse in those

facilities.

¶13. (C) Another cornerstone of the GoG's reform effort is the adoption of a new comprehensive penitentiary code drafted with the input from the Council of Europe. What was expected to be a relatively smooth adoption process of the draft by Parliament was derailed by the late addition of a new provision which would allow prison authorities to impose a 90-day sentence on any inmate who violated prison regulations. NGOs such as Prison Reform International and Georgian Young Lawyers Association criticized this proposal as a violation of international human rights standards since the provision contained no requirement for a hearing before the sentence would be imposed and there was no limit to the number of times an inmate could be subjected to the 90-day penalty. As result, the adoption of the new penitentiary code has been delayed.

ELECTION PREPARATION BEGINNING NOW

¶14. (C) In the estimated 17 months until the combined presidential and parliamentary elections are held in Autumn 2008, the GoG needs to address concerns that the voters' list is not as accurate as it could be and to adopt and implement changes to the Unified Election Code. Both concerns are currently being addressed. The OSCE's Ambassadors Elections Group has already met with Speaker of Parliament Nino Burjanadze to encourage the GoG to be proactive in its preparation for the 2008 elections in these and other key matters such setting the election date to allow for planning by international observer missions and for the Central Election Commission (CEC) to begin developing an overall strategic plan including developing professional capacity of election officials and for taking steps to ensure ethnic minorities full participation in the election process (reftel F).

¶15. (C) The CEC has announced that it will launch an initiative to update the voters list including conducting a door to door campaign this autumn (reftel G). By law, the CEC is required to update the voters list twice a year. Since the Rose Revolution, however, the CEC has not met this requirement. This initiative is complemented by significant quality control efforts being undertaken by the Civil Registry within the Ministry of Justice. (Note: The Civil Registry is responsible for issuing national identify cards. Donors, including USAID, have been funding a multi-year modernization of the registry. End Note.)

¶16. (C) In the wake of the October 2006 local elections, NGOs and the CEC openly debated the percentage of voters not properly included on the voters' list due to a typographical error in their surname or who were completely left off the voters list. Their estimates varied substantially from under 1 percent to upwards of 8 percent. In part, the divergence is due to different methodologies and large statistical margins of error due to small sample sizes. To avoid this potentially distracting post hoc debate after the critical presidential/parliamentary elections, we will encourage the CEC to support an independent audit of the list conducted using generally accepted auditing methodology.

¶17. (C) Parliament is currently considering the suggested Venice Commission (VC)/ODHIR recommendations for changes to the Unified Election Code. Under the leadership of Deputy

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Speaker Misha Machavariani, Parliament has established a working group, which includes opposition party MPs, to systematically review all the VC/ODHIR recommendations. While not all recommendations will likely be adopted (including changes to the composition of the CEC or redistricting of election districts), it is possible Parliament will lower the 7 percent threshold for party

representation in the newly elected Parliament to 5 percent. This would make it more likely that more than one opposition party would enter Parliament and in this way increase the checks on the overwhelming majority now enjoyed by the National Movement.

¶18. (C) It will also be important for the GoG to address concerns that arose during and after the October 2006 local election campaign that vague regulations and inadequate training of local election administrators could raise questions about the integrity of the election results. All observers of the October 2006 local elections agreed that results of the election accurately reflected ruling party National Movement's continuing high popularity. However, observers did note that the use of similar colors/logos and photos in public service announcements and National Movement campaign materials blurred the distinction between party and government. Also, inadequate training of precinct officials resulted in uneven application of invisible ink to voters' thumbs and inconsistent inspection at precinct entrances, potentially blunting any anti-fraud benefits. While these concerns did not call into question ruling party National Movement's resounding October 2006 victory, in a closer race, failure to address them when the results are not so clear-cut could raise questions of integrity of the elections process.

POLICE IMPUNITY STILL A CONCERN

¶19. (C) While the wholesale replacement of the notoriously corrupt traffic police by a new patrol police continues to be one of the most popular reforms of the Saakashvili government, concerns that law enforcement officials can still act with impunity remain. As reported in the 2006 Human Rights Country Report for Georgia, the GoG's record of investigating and prosecuting law enforcement officials accused of abuse or use of excessive force is uneven. During 2006, there were reportedly 13 deaths resulting from alleged excessive use of force by police. In one midday incident in central Tbilisi in April 2006, police fired on a car with four men allegedly enroute to burgle an apartment. One of the men died from at least 25 gunshot wounds. The investigation into this matter and other similar incidents dating back to the first quarter of 2006 are still pending in the Prosecutor General's Office.

¶20. (C) These high profile cases coupled with reports of evidence tampering by police (reftel H) reinforce a public perception that the police, while not necessarily openly soliciting bribes as in the pre-Rose Revolution period, are able to act improperly without a strong fear of punishment. The MOIA's delay of long-planned structural reforms (reftel) further reinforce these bad habits and inefficiencies.

COMMENT

¶21. (C) The Government, at our urging, is currently working to address all of these issues. We will continue to raise them at all levels to ensure that these key reforms, which are crucial to consolidating democracy in Georgia, are completed. End comment.

TEFFT